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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69546; File No. SR-BATS-2013-025)

May 9, 2013

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Related to Fees for Use of BATS Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 2013, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the "Options Pricing" section of its fee schedule effective immediately, in order to (i) increase fees for any logical port with bulk-quoting capabilities; and (ii) to eliminate the waiver of fees for logical ports with bulk-quoting capabilities for Members achieving certain Quoting Incentive Program ("QIP") thresholds.

The Exchange offers a bulk-quoting interface which allows Users<sup>6</sup> of BATS Options to submit and update multiple bids and offers in one message through logical

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<sup>6</sup> A User on BATS Options is either a member of BATS Options or a sponsored participant who is authorized to obtain access to the Exchange's system pursuant to BATS Rule 11.3.

ports enabled for bulk-quoting.<sup>7</sup> A logical port represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or non-member and grants that Member or non-member the ability to operate a specific application, such as FIX order entry or PITCH data receipt. The bulk-quoting application for BATS Options is a particularly useful feature for Users that provide quotations in many different options.

Currently, the Exchange charges a fee of \$1,000.00 per month per logical port with such bulk-quoting capabilities, which it began charging in October 2011.<sup>8</sup> The Exchange is proposing to increase the fee to \$1,500.00 per month per logical port with bulk-quoting capabilities. Over time, the costs associated with maintaining the infrastructure of such ports has increased and the Exchange has recently incurred additional expenses in connection with improving the performance and capacity of bulk-quoting ports. Accordingly, the Exchange believes that the proposed increase in port fees will help the Exchange to continue to maintain and improve its infrastructure.

Additionally, the Exchange is proposing to eliminate the waiver of fees for logical ports with bulk-quoting capabilities for Members achieving QIP. The QIP is a program designed to enhance market quality by incentivizing Market Makers<sup>9</sup> to participate on

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<sup>7</sup> See Securities Exchange Act Release Nos. 65133 (August 15, 2011), 76 FR 52032 (August 19, 2011) (SR-BATS-2011-029) and 65307 (September 9, 2011), 76 FR 57092 (September 15, 2011) (SR-BATS-2011-034).

<sup>8</sup> See Securities Exchange Act Release No. 65407 (September 27, 2011), 76 FR 61127 (October 3, 2011) (SR-BATS-2011-037).

<sup>9</sup> As defined in Rule 16.1(a)(37), a "Market Maker" on BATS Options is a member of BATS Options registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter XXII of the Exchange's Rules.

BATS Options by providing supplemental rebates for executed orders that add liquidity where the Market Maker has an average daily trading volume (“ADV”) of at least 0.25% of the total consolidated volume reported to the consolidated transaction reporting plan. Currently, the Exchange does not charge Members that participate in the QIP in more than 25 underlying securities for logical ports with bulk-quoting capabilities. The Exchange originally offered these free logical ports with bulk-quoting capability in order to encourage participation in the QIP and to increase the usage of bulk-quoting ports.<sup>10</sup>

The Exchange proposes to eliminate this waiver and to charge all Members equally for logical ports with bulk-quoting capabilities and to eliminate the exception for Members achieving the above described QIP thresholds. As mentioned above, as logical ports with bulk-capacity capabilities have become more widely adopted, the Exchange’s infrastructure costs associated with offering and continuing to offer bulk-quoting capabilities have increased. Additionally, the Exchange believes that providing ports free of charge has not encouraged Members to reserve and maintain ports efficiently, but rather, has led to a significant number of ports that are reserved and enabled by such market participants, but are under-used. Accordingly, the Exchange believes that the imposition of port fees for Market Makers participating in the QIP will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange.

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<sup>10</sup> See Securities Exchange Act Release No. 66120 (January 9, 2012), 77 FR 2108 (January 13, 2012) (SR-BATS-2011-053).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.<sup>11</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>12</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

The Exchange operates in a highly competitive market in which exchanges offer connectivity services as a means to facilitate the trading activities of members and other participants. Accordingly, fees charged for connectivity are constrained by the active competition for the order flow of such participants as well as demand for market data from the Exchange. If a particular exchange charges excessive fees for connectivity, affected members will opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, the exchange charging excessive fees would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it by affected members, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes

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<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

powerful restraints on the ability of any exchange to charge unreasonable fees for connectivity.

The Exchange believes that the proposal to increase fees for logical ports with bulk-quoting capability is equitably allocated, reasonable, and not unfairly discriminatory in that the proposal will help the Exchange to cover increasing infrastructure costs associated with offering and continuing to offer bulk-quoting capabilities to BATS Options Users. The Exchange notes that the use of such ports is optional and that market participants can continue to access BATS Options through other logical ports for \$400.00 per month. At the same time, the Exchange believes that its fees for bulk-quoting ports are reasonable, given the benefits and added efficiencies Users of BATS Options realize through such ports. In addition, the Exchange believes that its fees are equitably allocated among its constituents and not unfairly discriminatory, as, upon eliminating the bulk port fee exemption for Market Makers meeting QIP threshold requirements, they are uniform in application to all Users of BATS Options.

For the same reasons discussed above, elimination of the bulk port fee waiver for Market Makers meeting QIP threshold requirements is reasonable, equitably allocated, and not unfairly discriminatory. In addition, elimination of the bulk port fee waiver is reasonable, equitably allocated, and not unfairly discriminatory because it will encourage those Members that were previously exempted from paying bulk port fees to reserve and maintain ports in a more efficient manner. This will allow the Exchange to continue to maintain and improve its infrastructure for all Exchange customers, while also encouraging Market Makers to request and enable only the ports that are necessary for their operations related to the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity, including logical port fees, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>14</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2013-025 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2013-025. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing will also be available for inspection and copying at the



principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2013-025 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

[FR Doc. 2013-11518 Filed 05/14/2013 at 8:45 am; Publication Date:  
05/15/2013]

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<sup>15</sup> 17 CFR 200.30-3(a)(12).